

Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
28 N. First Street, 6th Floor
San Jose, California 95113-1210

408-286-5150

Attorney for plaintiff JOHN DAVI

File #5
FILED
DEC 16 2005
RECEIVED W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE
yes to summons

E-Filing

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

JOHN DAVI,

Plaintiff,

v.

OFFICER N. QUINONES, individually and in
his capacity as a Gilroy police officer; ARTURO
AMARO, individually and in his capacity as a
Gilroy firefighter; CLIFF COLYER, individually
and in his capacity as a Gilroy firefighter; DAVID
GUTIERREZ, individually and in his capacity as a
Gilroy firefighter; JOHN DOE AND RACHEL
ROE, individually and in their capacities as Gilroy
police officers and firefighters, the true names and
exact numbers of whom are unknown to plaintiff;
CITY OF GILROY; DOES 1 through 10,
Defendants.

ADR
C05 No. **05230** **RS**

COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS – JURY TRIAL
DEMANDED

JURISDICTION

1. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Sections 1331 and 1343. The

Complaint for Violation of Civil Rights –
Jury Trial Demanded

1 unlawful acts and practices alleged occurred in the City of Gilroy, which is within this judicial
2 district.

3
4
5 **PARTIES**
6

7 2. Plaintiff JOHN DAVI is and at all times herein mentioned was, a citizen of the United
8 States and a resident of San Jose, California.

9
10 3. Defendant CITY OF GILROY ("CITY") is a municipal corporation, duly organized and
11 existing under the laws of the State of California.

12
13 4. At all times mentioned herein, defendant OFFICER N. QUINONES, ARTURO
14 AMARO, CLIFF COLYER, DAVID GUTIERREZ, and JOHN DOE and RACHEL ROE
15 (hereinafter "OFFICERS"), were employed as police officers and firefighters for defendant CITY.
16 Defendant OFFICERS are sued individually and in their capacity as police officers and firefighters
17 for the CITY. By engaging in the conduct described here, defendant OFFICERS acted under the
18 color of law and in the course and scope of their employment for defendant CITY. By engaging in
19 the conduct described here, defendant OFFICERS exceeded the authority vested in them as police
20 officers and firefighters under the United States Constitution and as employees of the CITY.
21

22 5. Plaintiff is ignorant of the true names and capacities of defendants DOES 1 through 10,
23 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and
24 believes and thereon alleges that each defendant so named is responsible in some manner for the
25 injuries and damages suffered by plaintiff as set forth. Plaintiff will amend this complaint to state the
26
27

1 true names and capacities of defendants DOES 1 through 25, inclusive, when they have been
2 ascertained.

3
4 6. At all times mentioned herein, each named and DOE defendant was the agent or
5 employee of co-defendant CITY, and in doing the things alleged, were acting within the course and
6 scope of such agency or employment and with the actual or implied permission, consent,
7 authorization, and approval of CITY.

8
9
10 **STATEMENT OF FACTS**

11
12 7. On 24 November 2004, plaintiff returned to his place of employment, Jessup Trucking,
13 in the City of Gilroy, California.

14
15 8. Plaintiff began to feel dizzy, and began to have a seizure. Fearing for plaintiff's safety, his
16 supervisor called "911"

17
18 9. Gilroy firefighters ARTURO AMARO, CLIFF COLYER, and DAVID GUTIERREZ
19 responded. Without being dispatched, OFFICER N. QUINONES responded as well.

20
21 10. When OFFICERS arrived, it was obvious that plaintiff was in convulsions and in the
22 midst of a grand mal seizure. Despite this fact, OFFICERS treated plaintiff as if he were a
23 combative criminal rather than a person in medical distress, and proceeded to restrain plaintiff as
24 a criminal rather than as a citizen in medical distress. In fact, OFFICER N. QUINONES
25 discharged his taser on plaintiff multiple times, putting him at severe risk for serious injury, and in
26 fact causing injury.

1 11. Plaintiff was transported by ambulance, where he was immediately diagnosed as having
2 had a grand mal seizure and in need of medical attention. Despite this fact, OFFICER N.
3 QUINONES accused plaintiff of being under the influence of drugs despite plaintiff's denial and
4 medical staff's insistence that plaintiff had sustained a seizure. When plaintiff heard the accusations,
5 he asked for a blood test, which was administered and revealed that plaintiff indeed had no illegal
6 drugs in his system.

7
8 12. Despite all of this information, OFFICER N. QUINONES arrested plaintiff for being
9 under the influence of drugs and resisting arrest, and wrote a false police report in order to induce
10 the District Attorney to file charges against plaintiff as well as to cover up OFFICER N.
11 QUINONES', as well as the other OFFICERS', misdeeds.

12
13 13. As a result of the false report, the District Attorney did in fact file a criminal complaint
14 against plaintiff. When the true facts were learned, all charges were dismissed against plaintiff.

15 16 17 **DAMAGES** 18

19 14. As a proximate result of defendants' conduct, plaintiff suffered pain and physical injuries.
20 As a further proximate result of defendants' conduct, plaintiff suffered severe emotional and mental
21 distress, fear, terror, anxiety, humiliation, embarrassment, and loss of their sense of security, dignity,
22 and pride as a citizen of the United States.

23
24 15. As a further proximate result of defendants' conduct, plaintiff incurred medical expenses.
25
26
27

1 16. As a further proximate result of defendants' conduct, plaintiff has lost time from his usual
2 occupation and thereby lost income.

3
4 17. The conduct of defendant OFFICERS was malicious, wanton, and oppressive. Plaintiffs
5 are therefore entitled to award of punitive damages against defendant OFFICERS.

6
7 18. Plaintiff found it necessary to engage the services of private counsel to vindicate his rights
8 under the law. Plaintiff is therefore entitled to an award of all attorney's fees incurred in relation to
9 this action for violation of his civil rights.

10
11
12 **FIRST CLAIM FOR RELIEF**

(42 U.S.C § 1983)

13 (Against defendants OFFICERS and DOES 1 through 10, inclusive)

14
15 19. Plaintiff realleges and incorporates by reference paragraphs 1 through 18 of this
16 complaint.

17
18 20. In doing the acts complained of, defendants OFFICERS acted under the color of the
19 law to deprive the plaintiff of certain constitutionally protected rights, including, but not limited to:

20 a. The right to be free from detention and arrest without probable cause as guaranteed by
21 the Fourth and Fourteenth Amendments to the United States Constitution;

22 b. The right to be free from unreasonable searches and seizures, as guaranteed by the Fourth
23 and Fourteenth Amendments to the United States Constitution;

24 c. The right not to be deprived of life, liberty, or property without due process of law, as
25 guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

26
27
28 Complaint for Violation of Civil Rights –
Jury Trial Demanded

1 d. The right to be free from the use of excessive force by police officers and firefighters,
 2 which is guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States
 3 Constitution;

4 e. The right to equal protection of the laws, as guaranteed by the Fourteenth Amendment
 5 to the United States Constitution;

6 f. The right to be free from cruel and unusual punishment; and from pre-charging and pre-
 7 judgment punishments, as guaranteed by the Eighth Amendment to the United States Constitution;

8 g. the right to be free from interferences with the zone of privacy, as protected by the Fourth
 9 and Ninth Amendments to the United States Constitution;

10 h. The right to prompt medical attention while in the control of government officers as
 11 guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States
 12 Constitution.

13
 14 21. As a proximate result of defendants' wrongful conduct, plaintiff suffered injuries and
 15 damages as set forth.

16
 17 **WHEREFORE**, Plaintiff prays for relief as set forth.

18
 19
 20 **SECOND CLAIM FOR RELIEF**
 21 (42 U.S.C. § 1983)
 22 (Against Defendant CITY OF GILROY)

23 22. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 21 of this
 24 complaint.

1 23. The CITY, by and through its supervisory officials and employees, has been given notice
2 on repeated occasions of a pattern of ongoing constitutional violations and practices by defendant
3 police officers and firefighters herein and other Gilroy police officers and firefighters, consisting of
4 false arrests of non-white persons and persons in general without probable cause, use of excessive
5 force against non-White persons and persons in general, and unequal law enforcement against non-
6 white persons and disabled persons. Despite said notice, defendant CITY has demonstrated
7 deliberate indifference to this pattern and practice of constitutional violations by failing to take
8 necessary, appropriate, or adequate measures to prevent the continued perpetuation of said pattern
9 of conduct by Gilroy police officers and firefighters, and instead has encouraged it. This lack of an
10 adequate supervisory response by defendant CITY demonstrates the existence of an informal
11 custom or policy which tolerates and promotes the continued violation of civil rights of all persons
12 by Gilroy police officers and firefighters.

13
14 24. The acts of defendant police officers and firefighters alleged herein are the direct and
15 proximate result of the deliberate indifference of defendant CITY and its supervisory officials and
16 employees to violations of the constitutional rights of persons by defendant police officers and
17 firefighters herein, and other members of the Gilroy Police Department and Fire Department. The
18 plaintiff's injuries were foreseeable and a proximate result of the deliberate indifference of the CITY
19 to the pattern, practices, customs, and policies described above.

20
21 **WHEREFORE**, Plaintiff prays for relief as set forth.

22 //

23 //

24 //

25 //

26 //

27

28 Complaint for Violation of Civil Rights –
Jury Trial Demanded

THIRD CLAIM FOR RELIEF

(Assault and Battery)

(Against defendants OFFICERS and DOES 1 through 10, inclusive)

25. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 21 of this complaint.

26. Defendant OFFICERS committed assault and battery against plaintiff by violently forcing him into submission while plaintiff was having a seizure and in need of medical treatment, and tasing him while he was both restrained as well as in the midst of a medical emergency.

27. Defendants' conduct was neither privileged nor justified under statute or common law.

28. As a proximate result of defendants' wrongful conduct, plaintiff suffered damages as set forth.

29. Since the conduct of defendant officers occurred in the course and scope of their employment, defendant CITY is therefore liable to plaintiff pursuant to respondeat superior.

WHEREFORE, Plaintiff prays for relief as set forth.

FOURTH CLAIM FOR RELIEF

(False Imprisonment)

(Against defendants OFFICERS and DOES 1 through 10, inclusive)

30. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 21 of this complaint.

1 31. On or about 24 November 2004, defendant OFFICERS arrested plaintiff maliciously
2 and without a warrant or order of commitment of any kind, or any other legal authority of any kind,
3 even though plaintiff had not committed any crime or public offense. Defendant OFFICERS did
4 not have reasonable cause to believe that plaintiff had committed any offense.

5
6 32. Defendant OFFICERS transported plaintiff to Saint Louise Hospital and then to jail
7 where plaintiff was imprisoned until his eventual release.

8
9 33. The conduct of defendant OFFICERS, as set forth herein, was extreme and outrageous
10 and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized
11 society. However, in order to deliberately injure plaintiff, defendant OFFICERS committed the
12 aforementioned extreme and outrageous acts with the intent to inflict severe injury upon plaintiff,
13 thereby justifying an award of punitive damages against defendant OFFICERS.

14
15 34. As a proximate result, plaintiff suffered damages as set forth.

16
17 35. Since the conduct of defendant officers occurred in the course and scope of their
18 employment, defendant CITY is therefore liable to plaintiff pursuant to respondeat superior.

19
20 **WHEREFORE**, Plaintiff prays for damages as set forth.

21 //

22 //

23 //

24 //

25 //

26 //

27

28 Complaint for Violation of Civil Rights –
Jury Trial Demanded

FIFTH CLAIM FOR RELIEF

(Intentional Infliction of Emotional Distress)

(Against defendants OFFICERS and DOES 1 through 10, inclusive)

36. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 21 of this complaint.

37. The conduct of defendant OFFICERS, as set forth herein, was extreme and outrageous and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized society. However, in order to deliberately injure plaintiff, defendant OFFICERS committed the aforementioned extreme and outrageous acts with the intent to inflict severe mental and emotional distress upon plaintiff.

38. As a proximate result of defendants' willful, intentional and malicious conduct, plaintiff suffered severe and extreme mental and emotional distress. Therefore, plaintiff is entitled to an award of punitive damages as against the individually named police officers and firefighters. Plaintiff has suffered damages as set forth.

39. Since the conduct of defendant OFFICERS occurred in the course and scope of their employment, defendant CITY is therefore liable to plaintiff pursuant to respondeat superior.

WHEREFORE, Plaintiff prays for relief as set forth

//

//

//

//

//

Complaint for Violation of Civil Rights -

Jury Trial Demanded

SIXTH CLAIM FOR RELIEF

(Negligence)

(Against defendants OFFICERS and DOES 1 through 10, inclusive)

40. Plaintiff realleges and incorporate by reference herein paragraphs 1 through 39 of this complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

41. At all times herein mentioned, defendants were subject to a duty of care, to avoid causing unnecessary physical harm and distress to citizens in the exercise of the police function. The conduct of defendants, as set forth herein, did not comply with the standard of care to be exercised by reasonable police officers and firefighters, proximately causing plaintiff to suffer damages as set forth.

42. Since the conduct of defendant OFFICERS occurred in the course and scope of their employment, defendant CITY is therefore liable to plaintiffs pursuant to respondeat superior.

WHEREFORE, Plaintiff prays for relief as set forth.

SEVENTH CLAIM FOR RELIEF

(Negligent Infliction of Emotional Distress)

(Against defendants OFFICERS and DOES 1 through 10, inclusive)

43. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 42 of this complaint, except for any and all allegation of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

1 44. At all times herein mentioned, defendants were subject to a duty of care, to avoid
2 causing unnecessary physical harm and distress to citizens. The conduct of defendants, as set forth
3 herein, did not comply with the standard of care to be exercised by reasonable police officers and
4 firefighters, proximately causing plaintiffs to suffer damages as set forth.

5
6 45. The conduct of defendant OFFICERS as set forth herein, was extreme and outrageous
7 and beyond the scope of conduct which should be tolerated by citizens in a democratic and civilized
8 society.

9
10 46. As a proximate result of defendants' conduct, plaintiff suffered severe and extreme
11 mental and emotional distress. Plaintiff has suffered damages as set forth.

12
13 **WHEREFORE**, Plaintiff prays for relief as set forth.

14
15
16 **CLAIM REQUIREMENT**

17
18 47. For state causes of action related to Federal claims, plaintiff is required to comply with
19 an administrative claim requirement under California Law. Plaintiff has complied with all
20 applicable requirements.

21
22
23 **JURY DEMAND**

24
25 48. Plaintiff hereby demands a jury trial in this action.

PRAYER

WHEREFORE, Plaintiff prays for relief as follows:

1. General damages in an amount according to proof;
2. Special damages in an amount according to proof;
3. Punitive damages in an amount according to proof;
4. Reasonable attorney's fees pursuant to 42 U.S.C. section 1988;
5. Costs of suit incurred herein; and,
6. Such other and further relief as the Court may deem just and proper.

Dated: 11 December 2005

LAW OFFICES OF ANTHONY BOSKOVICH

By: _____

Anthony Boskovich
Attorney for Plaintiff

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150